

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

UNITED STATES OF AMERICA,)
Plaintiff,) CR19-159-RSL
v.) SEATTLE, WASHINGTON
PAIGE A. THOMPSON,) December 1, 2022
Defendant.) 9:00 a.m.
) Restitution
) Hearing via Zoom

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE ROBERT S. LASNIK
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 DECEMBER 1, 2022

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3 THE DEPUTY CLERK: Good morning, Your Honor. Your
4 Honor, we are here this morning for the scheduled restitution
5 hearing in the matter of the United States versus Paige A.
6 Thompson, Cause Number CR19-159, assigned to this Court.

7 If counsel could please make your appearances for the
8 record.

9 MS. MANCA: Good morning, Your Honor.

10 MR. HAMOUDI: Good morning, Your Honor. Mohammad
11 Hamoudi here on behalf of Ms. Thompson.

12 THE COURT: Hi, Mr. Hamoudi, and I see you also have
13 Mr. Klein with you.

14 MR. KLEIN: Hello, Your Honor.

15 THE COURT: And Ms. Thompson is appearing on video.

16 Mr. Hamoudi, you have filed -- and Ms. Meister is there,
17 too -- you have filed a document indicating that Ms. Thompson
18 has waived an in-person hearing or having her presence at an
19 in-person hearing for this hearing; is that correct?

20 MR. HAMOUDI: That's correct, Your Honor.

21 THE COURT: Ms. Thompson, that's still what you want
22 to do, right?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Do you have any questions about it?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: Okay, we'll proceed, then.

2 Mr. Friedman and Ms. Manca.

3 MS. MANCA: Thank you, Your Honor. And we also have
4 Krista Bush and Tania Culbertson on behalf of the government.

5 THE COURT: I see both Ms. Bush and Ms. Culbertson
6 and Mr. Friedman. Great.

7 So we are here setting the restitution as part of the
8 Judgment and Sentence in the case, and I've received
9 documents from both sides. I think the government, as the
10 moving party, should go first, so Ms. Manca.

11 MS. MANCA: Thank you, Your Honor. Respectfully, the
12 defense's objection -- I'm going to start with forfeiture and
13 then move to restitution. Respectfully, the defense's
14 objection to the entry of a specific money judgment in the
15 amount of, approximately, \$10,000 is frivolous, and I don't
16 take that characterization lightly. I'm going to explain
17 five reasons that it's true.

18 First, the defense challenges the charging period
19 supporting this forfeiture order, indicating that it ends on
20 July 17th, 2019, without acknowledging that the charging
21 period for Count 8, which is the cryptojacking count, also
22 supporting forfeiture, runs through at least August 5th,
23 2019.

24 Second, the defense challenges the details in the
25 government's proof without acknowledging that the dates in

1 the transactions that the government uses to support this
2 claim were not only in Exhibit 850 and 855, but also in
3 Vincent Kenney's testimony, Docket 342, pages 61 to 62.

4 Number three, the defense's position is inconsistent with
5 their own sentencing memoranda, filed Docket 380, at page 16,
6 indicating -- and this is a quote from that -- "At the end of
7 the day, the only demonstrable monetization Ms. Thompson
8 achieved from her use of the open forward proxies was
9 cryptomining in an amount of \$10,000."

10 Number four, the defense challenges how the government
11 calculated the value of the cryptocurrency. One of the
12 column headings in the spreadsheet, Exhibit 855, and also
13 Exhibit 2 to the government's sentencing memoranda, has a
14 column header that says "Historical Price of Ether." Vincent
15 Kenney also testified about the historical prices of Ether
16 and how he used that to factor in his calculations; Docket
17 342, pages 73 to 75.

18 The fifth reason -- and this is probably the most
19 egregious -- is that the defense suggests that the Court
20 should calculate forfeiture based on the present-day value of
21 Ether. The value of one Ether today is \$1,268.95, so the
22 present-day value of approximately 55 Ether is around
23 \$70,000. That's not what the government is asking for. The
24 present-day value -- or the historical value of Ether in 2019
25 was significantly lower than it is today, even with the rise

1 and fall of cryptocurrency.

2 It's also worth noting that the value of the amount that
3 Ms. Thompson withdrew from the account was actually \$14,612.
4 So the government's request for forfeiture is actually the
5 least of the three values that we could have calculated for a
6 specific money judgment. We believed it was intellectually
7 honest to take the amount and the value of the cryptocurrency
8 at the time the offense was completed.

9 So I am happy to answer any other questions the Court may
10 have in response to the defense pleading, but we believe --

11 THE COURT: Well, Ms. Manca, what I was a little
12 unclear about -- and I'm sure it's my own difficulty with
13 cryptocurrency -- but what are we actually talking about?
14 Are we still talking about, you know, cryptocurrency? Are we
15 talking about the cryptocurrency has been converted to
16 dollars? What, physically, are we talking about?

17 MS. MANCA: That's a good question. It goes to the
18 difference in forfeiture between a judgment for a forfeiture
19 of specific property, which would involve the seizure of
20 property, and then we would be talking about fluctuating
21 values. But what we're asking for is a Rule 32.2 specific
22 money judgment, which is for the value of ill-gotten gains
23 that are not recoverable due to actions of the defendant.

24 So in this specific case, by the time the government
25 identified the wallet, the proceeds had been drained, and

1 then, actually, were further drained while Ms. Thompson was
2 on pretrial release, so that asset is no longer available for
3 forfeiture. There are circumstances in which it could be
4 allocated toward a specific money judgment, but what we're
5 talking about is no different than if someone embezzled
6 \$10,000. They would not be entitled to those gains, because
7 they were illegally procured, and so we're talking about a
8 specific money judgment for the value of the cryptocurrency
9 that was cryptojacked.

10 Does that answer the Court's question?

11 THE COURT: Well, it answers my question to some
12 degree, but in your analogy, the person who embezzled
13 \$10,000, if that \$10,000 doesn't exist anymore, isn't that
14 captured by the restitution responsibility?

15 MS. MANCA: I would say that it could be, but in this
16 case, first, the victims are different, but second of all,
17 we're trying to disgorge an ill-gotten gain as opposed to
18 making the victims whole, so they're two different goals of
19 sentencing. They could, potentially, I guess, serve the same
20 function, and the Court could consider that in ordering one
21 or the other forfeitures. Ms. Bush is here on behalf of the
22 Asset Forfeiture Unit and can speak to whether it's mandatory
23 or discretionary. But in this case, it is sort of an
24 academic question, because the victims are different, and
25 what we are trying to avoid is a situation where someone

1 profits from criminal activity. She is not entitled to the
2 money that she earned from cryptojacking, and so the Judgment
3 is part of the punishment for the offense, and that's one of
4 the goals of forfeiture.

5 THE COURT: But the forfeiture would mean that that
6 \$10,000 doesn't go back to the victims, it goes to the
7 Federal Government, correct?

8 MS. MANCA: That's correct.

9 THE COURT: Okay.

10 MS. MANCA: And it's a way of -- the way that the
11 cases talk about it is, even if the money is spent or it no
12 longer exists, there is a sentencing value in not allowing a
13 person to profit from ill-gotten gains --

14 THE COURT: Okay.

15 MS. MANCA: -- is the policy position behind the
16 forfeiture.

17 THE COURT: Thanks, Ms. Manca.

18 Ms. Bush, was there anything you wanted to add about the
19 arcane area of forfeiture?

20 MS. BUSH: It is unusual, Your Honor. Forfeiture and
21 restitution are different. They can both be imposed in the
22 same case, and in fact, forfeiture is mandatory. So it does
23 go to the government initially. We can make a request
24 through MLARS to ask the Attorney General to apply -- it is
25 funds that we receive against the forfeiture money judgment

1 to restitution or to victims who aren't even moved in the
2 restitution. So, in this case, where the victims are
3 different, it's particularly important, we believe, that the
4 Court impose both restitution and forfeiture.

5 THE COURT: Okay. Thank you, Ms. Bush.

6 Okay. Who's doing it for the defense? Mr. Hamoudi,
7 Mr. Klein?

8 MS. MEISTER: That would be me, Ms. Meister.

9 THE COURT: Ms. Meister, okay.

10 MR. HAMOUDI: Keeping it fresh, Your Honor.

11 THE COURT: Thank you.

12 MS. MEISTER: Good morning, Your Honor.

13 THE COURT: Good morning.

14 MS. MEISTER: I think the first thing that I would
15 say is, Ms. Manca repeatedly referred to Ms. Thompson
16 withdrawing from the accounts, and Your Honor asked a
17 question about embezzlement. If this were an embezzlement
18 case, you would expect to see some sort of tracing. The
19 government would've traced the funds that hit the wallet and
20 would have traced Ms. Thompson actually withdrawing those
21 amounts to a bank account, to another wallet that it can
22 prove she owned, to a purchase, something.

23 Here, the only evidence the government has provided that
24 it was Ms. Thompson who withdrew that money from the accounts
25 is boastful statements that she allegedly made that don't

1 even correspond, in fact, to the amounts that were in that
2 wallet. At best, the evidence they provided you indicates
3 that ETH was sent to that wallet, but there's no evidence of
4 who owned that wallet, who withdrew money from that wallet.
5 There's no tracing here. The government didn't seize the
6 wallet.

7 Another thing that I take exception to is Ms. Manca
8 represented that Ms. Thompson, while on pretrial release,
9 withdrew money. That wasn't substantiated by Mr. Beetham,
10 but beyond that, the government, allegedly, could have
11 prevented that by seizing the wallet. They never did that.
12 So what they're really trying to do is substitute funds that
13 they can't prove Ms. Thompson ever withdrew or ever used,
14 ever used to purchase, as ill-gotten gains. I don't think
15 the evidence the government has provided provides the
16 requisite nexus for that.

17 Ms. Manca also talked about, the victims are different.
18 It's cryptomining. There's no victim. The only alleged
19 victim they could potentially call out would be the resources
20 that were used by -- on Amazon Web Services, and that's not
21 what they're doing here. So there is no victim. I think
22 Your Honor makes a very prescient point that, here, this case
23 is really about restitution.

24 And then, the last thing I'll say -- or the last two
25 things I'll say is, I don't think it's frivolous to point out

1 that the government made a procedural error when it says it
2 could forfeit under Count 1 past July of 2019. I don't
3 disagree with Ms. Manca that, obviously, it runs through
4 August 5th on Count 8. That's quite clear. I just wanted to
5 point out that the government claimed forfeiture under two
6 counts, and under Count 1, it can't claim it past July 2019.

7 And as to the historical price of Ether, you know, I think
8 the government -- the defense objection stands. Yes, there's
9 that spreadsheet, Exhibit 855, that references the historical
10 price of Ether. The defense's point is, the historical price
11 of Ether in a given 24-hour period can vary greatly, and so
12 it would have been helpful to know, was he using the average
13 daily price of Ether on that day, was he using the high, the
14 low. Again, these go to the preponderance of the evidence,
15 so the defense's position is that this case is really about
16 restitution.

17 Ms. Thompson has no objection to forfeiting anything that
18 was seized from her house, the computers. She does object to
19 the 10,000 and change, because the government hasn't carried
20 its burden with respect to the cryptomining. Thank you.

21 THE COURT: Thank you, Ms. Meister.

22 Ms. Manca, any response, or Ms. Bush?

23 MS. MANCA: Your Honor, I'll rest on what I've said.
24 We stand by our argument. Thank you.

25 THE COURT: Ms. Bush.

1 MS. BUSH: Yes, Your Honor. The only thing I would
2 point out is that there are two types of forfeiture that are
3 established in the case law and in the statutes. And for a
4 forfeiture money judgment, all the Court is required to do is
5 determine what the proceeds were, and that's the amount of
6 the forfeiture money judgment.

7 The nexus that Ms. Meister is talking about refers to
8 forfeiture of specific property, such as the computers in
9 this case.

10 THE COURT: And when you have a case where you have a
11 large amount of restitution and also a forfeiture for a money
12 judgment rather than property, what gets priority? If
13 Ms. Thompson were suddenly to come into some money, would it
14 be the forfeiture judgment or the restitution that would take
15 priority?

16 MS. BUSH: Your Honor, restitution always takes
17 priority over forfeiture.

18 THE COURT: Okay.

19 MS. BUSH: In this case, if you impose the forfeiture
20 money judgment, we would need to come back to the Court
21 asking to identify an asset that we could apply towards that
22 and ask the Court to forfeit that as a substitute asset to
23 satisfy the forfeiture money judgment. So it would be a
24 two-step process, whereas restitution would just be executed
25 upon.

1 THE COURT: Okay, I've got that now. Thank you.
2 That helped me a lot.

3 All right. Let's move on to the restitution, then.

4 Mr. Friedman, something tells me you are going to argue
5 that one.

6 MS. MANCA: He's missing his -- it's actually me,
7 Your Honor.

8 THE COURT: Oh, okay. So he's telling me --

9 MS. MANCA: But that was a reasonable -- it was a
10 reasonable guess.

11 THE COURT: -- you're favoring white men over women
12 and you're being a jerk. I got it. But he didn't want to
13 actually say it, so he stayed muted.

14 Okay. Go ahead, Ms. Manca.

15 MS. MANCA: As the Court is aware, the goal of
16 restitution is to restore someone to the position they
17 occupied before a particular event, and we are unable to do
18 that here, because the actual harm that Capital One suffered
19 as a result of Ms. Thompson's conduct is at least five times
20 the amount of restitution that the United States is seeking
21 in this case, likely even more than that. Everyone agrees
22 that there are likely going to be challenges, and it is
23 unlikely that Ms. Thompson is going to be able to pay the
24 full amount of any restitution order that this Court imposes,
25 so Capital One will not be made whole. That's just a fact.

1 THE COURT: Ms. Manca --

2 MS. MANCA: But they're entitled to restitution.

3 THE COURT: Ms. Manca, did you watch the World Series
4 this year?

5 MS. MANCA: No. After the Mariners lost, I got too
6 sad.

7 THE COURT: Okay.

8 MS. MANCA: No, no, I did watch. I did watch.

9 THE COURT: Okay. Did you notice that it wasn't just
10 the World Series? It was the Capital One World Series.

11 MS. MANCA: I did, actually.

12 THE COURT: They actually sponsored the World Series,
13 so it's not like they don't have hundreds of billions of
14 dollars to, you know, I would say, fritter away on sponsoring
15 the World Series or paying Samuel L. Jackson to say things,
16 or whatever other stars. You know, let's not paint Capital
17 One as the kind of victim that we're usually talking about
18 here with restitution.

19 But, definitely, they have suffered specific expenses that
20 will need to be addressed through restitution, but, you know,
21 saying to me that you're not really asking for another 200
22 million or so or 190 million from the class action doesn't
23 mean you're being judicious. It means let's just focus on
24 the harms that were actually caused by what Ms. Thompson did
25 rather than what was caused by Capital One being frivolous

1 with security and, you know, putting much more of their money
2 into advertising than security.

3 MS. MANCA: Well, the government submitted its
4 declaration. We submitted the PSR regarding the amounts that
5 Capital One lost. All of these are within both the case law
6 regarding CFAA cases and losses to companies that have
7 suffered breaches of this kind, specifically credit
8 monitoring, the cost of technological remediation, the cost
9 of identifying customers, the cost of the call center, the
10 cost of analyzing the breach, itself, and the nature of the
11 technological aspect of the breach.

12 The question is one of proximate cause, as the Court
13 knows, whether Ms. Thompson's actions were a "but for" cause
14 of the losses that Capital One suffered and whether those
15 losses were reasonably foreseeable. Certainly, in this day
16 and age, most people would realize that downloading terabytes
17 of data would necessitate notifications to customers and
18 credit monitoring.

19 And again, Ms. Thompson is not, you know, what we might
20 consider a layperson in this area. She's both
21 technologically proficient, a woman of great intelligence.
22 Her social media indicated she was well-versed in the areas
23 of technology. And also, when I say "technology," not just
24 the technological aspects of the breach and technology,
25 itself, but also circumstances in which other people had

1 conducted breaches and the consequences of what those
2 breaches were, so we see that in her social media account.
3 So, even if one might say that, for general lay people, it
4 wasn't foreseeable, certainly, it was foreseeable for someone
5 of Ms. Thompson's technical expertise.

6 Given that the material is in the PSR and it is,
7 therefore, you know, a subject of sufficient reliability for
8 the Court to consider it and the Court has already found
9 those amounts to be losses attributable to Ms. Thompson's
10 conduct, we believe all of that is sufficient to support a
11 restitution order.

12 I'm happy to answer any questions that the Court has.

13 THE COURT: And the actual number you're asking for
14 is a little above 40 million?

15 MS. MANCA: Correct. We've excluded all of the other
16 costs related -- you know, that might be deemed related to
17 civil settlements. As I mentioned, there are other buckets
18 of substantial costs that we haven't asked for, since -- you
19 know, including Capital One's involvement in the prosecution,
20 the time that they spent to look through all of the data and
21 make sure they had identified exactly what was lost.

22 THE COURT: Okay. Thanks, Ms. Manca.

23 Ms. Meister.

24 MS. MEISTER: Yes, Your Honor. Well, at least
25 Ms. Manca and I can agree on one thing, which is that

1 Ms. Thompson is a woman of great intelligence.

2 A few points: One is, I know Ms. Manca relied on the PSR.
3 I would say there's actually been a shift in the law since
4 the PSR, and that's the case that was decided yesterday by
5 the Third Circuit, and that's the *Banks* case, which, when
6 you're talking about fraud and you're talking about loss
7 amounts, I think it was unclear before *Banks* -- and I
8 understand *Banks* is the Third Circuit and it's not binding on
9 Your Honor -- but I think the Third Circuit was very clear
10 that, under the PSR, you can only count actual loss, not
11 intended loss.

12 And here, as Ms. Manca says -- and I agree with her --
13 it's reasonably-foreseeable, actual loss. And while
14 Ms. Thompson is a woman of great intelligence, the way that
15 this happened, she couldn't see what she was copying
16 beforehand. And the way that Capital One kept it, she
17 couldn't see a lot of it without a fair amount of
18 configuration. And so -- and then, when she did see, you
19 know, I think the evidence was clear at trial, what she
20 actually did with it is nothing.

21 So I think, you know, there are certain things that were
22 reasonably foreseeable. I don't think all the things
23 Mr. Watts has in his declaration -- leaving aside, you know,
24 the civil settlement, which Your Honor has already done --
25 were reasonably foreseeable.

1 I think, at page 22 and 23 of Your Honor's sentencing, you
2 asked a really good question of Mr. Friedman, which is, had
3 Ms. Thompson done exactly the same thing and then she
4 immediately alerts Capital One through the reasonable --
5 responsible disclosure program, would Capital One have
6 incurred a lot of these costs? And Mr. Friedman, I think,
7 admitted that they would have incurred some costs, but they
8 would have been different in scale. And I think, Your Honor,
9 the answer to that question is, they would have incurred a
10 lot of the same costs. Some of it they may have been able to
11 do slower and internally, such as figuring out how it
12 occurred, but they probably would have, legally, had to
13 notify all the victims -- or not the victims, but the people
14 whose information got disclosed. They likely would have had
15 to pay for credit monitoring for all of them. They likely
16 would have had to store all of that data on AWS servers in
17 case they got sued for having, you know, all of the issues,
18 as Your Honor pointed out and as the OCC pointed out, with
19 their cloud-computing environment.

20 So I don't think Ms. Thompson was the "but for" cause. A
21 lot of these claimed charges, even to the extent that Your
22 Honor wants to consider them, because a lot of them were
23 provided to Your Honor without much in the way of supporting
24 evidence to indicate that it was during the time period of
25 Ms. Thompson versus during the time period of the civil

1 lawsuit versus the time period of the OCC. You know, I don't
2 think it's fair -- or I don't think, under the MVRA,
3 Ms. Thompson can be held responsible for storing data on an
4 AWS server for the purposes of providing discovery in the
5 civil lawsuit that comes years later.

6 So, really, I think what we're talking about, Your Honor,
7 is what we outlined in our memorandum, which was, you know,
8 the 120,000 to determine the root cause and the 425,000 used
9 to hire a third-party forensics firm to figure out whether
10 everything had been remediated appropriately. I think those
11 are reasonably foreseeable. I don't think the government
12 sustained their burden to prove that those were attributable
13 to Ms. Thompson as opposed to other factors, but I think the
14 free credit monitoring, I don't think it's reasonably
15 foreseeable. I think Capital One would have had to do it in
16 any event.

17 The \$5 million in call center expenses is a really round
18 number of a lot of different things that aren't broken out by
19 Capital One, aren't broken out by time period, and, quite
20 honestly, aren't reasonably foreseeable to somebody that
21 Capital One is going to have to go and pay overtime to call
22 center employees years down the road after a breach. And
23 then, the 2.5 million in notifying impacted individuals,
24 again, it encapsulates a lot of information, not a lot of
25 information about the date that this happened, and Capital

1 One would have had to do that had Ms. Thompson utilized the
2 responsible disclosure.

3 I also would point out that, as Ms. Manca said,
4 Ms. Thompson lacks the ability to pay any amount in
5 restitution, and I think the Court needs to take that into
6 consideration. And I think, you know, the Court took into
7 consideration wanting Ms. Thompson to really thrive in the
8 future and become a productive, functioning member of
9 society. Hanging her with -- you know, even cutting it by a
10 fifth of the amount Capital One suggested -- millions of
11 dollars around her neck for the rest of her life is almost
12 the same thing as sending her to jail for a significant --
13 you know, it's like a debtor's prison. So I think Your Honor
14 should take all of those things into consideration when
15 fashioning what the defense concedes is a required
16 restitution order under the MVRA. Thank you.

17 THE COURT: Thank you, Ms. Meister.

18 Ms. Manca, what about the fact that it's highly unlikely
19 that any individual in Ms. Thompson's situation will be able
20 to meet a restitution amount of such a high setting like
21 \$40 million? Does that factor in at all?

22 MS. MANCA: Your Honor, I don't believe it does,
23 given the statutory statement that the economic circumstances
24 of the defendant are not something for the Court to consider.
25 There are, you know, numerous cases involving fraud and

1 millions of dollars where -- the harm is what it is. If it
2 were any less, you know, this case would be different, but I
3 don't believe that the economic circumstances of Ms. Thompson
4 should be considered.

5 THE COURT: I've discovered a few TV stations that I
6 didn't know existed -- Decades, MeTV -- that show old,
7 black-and-white shows from my childhood, like "Car 54, Where
8 Are You?" and the "Dick Van Dyke Show," things like that.
9 And one of the shows they have is "The Millionaire," which
10 was a captivating show when I was a kid. A guy would go
11 around with a check for a million dollars to people who were
12 just average people working in average jobs. And his boss,
13 this multi-millionaire, just decided to bestow upon those
14 people this million-dollar check. And it didn't always work
15 out. It was before the lotteries, but a lot of lottery
16 winners don't really end up thriving with the money, but it
17 was an interesting concept that somebody could say, you know,
18 "I feel bad for Ms. Thompson and what she went through; I
19 want to give her a million dollars," which, in 2022 dollars,
20 would be about \$10 million from what it was in 1960.

21 That's kind of what we sometimes look at with restitution
22 and say, yeah, there's no way the person could actually pay
23 it, but you never know, somebody could bestow upon that
24 person a million dollars, or a relative could get money and
25 leave it to them or anything like that. So I could see that

1 the Court should not take that into consideration, although,
2 at some point, on restitution, we're just going to be using a
3 percentage of gross income, right, and that's going to set
4 the guideposts for this. And the sentence will run out at
5 some point, and then the restitution obligation exists as a
6 separate judgment that the United States can enforce, if it
7 so desires, going forward. So I think that's the structure
8 here.

9 Let me go back to Ms. Manca for one more thing. I did, in
10 the sentencing dialogue that Ms. Meister talked about,
11 wonder, some of those costs would have been put upon Capital
12 One to remedy the failure of the security, even if
13 Ms. Thompson had just brought these things to Capital One's
14 attention as a white-hat hacker. Does that matter at all
15 here?

16 MS. MANCA: Well, one of the important things to
17 think about in terms of this case -- and one of the things
18 the government has emphasized throughout -- is that there is
19 a chasm between the actions that Ms. Thompson actually took
20 and what would have happened, you know, had she reported it
21 at one of the initial stages. So that chasm and the money
22 that flows from that, it's substantial.

23 I think there are likely -- I can think of at least
24 \$35 million in the credit-monitoring costs and the costs of
25 the call center notifications and, essentially, even the

1 forensics firm and things like that that were directly
2 attributable to the downloading of the data, specifically. I
3 mean, that's really what elevated the harm here and why it's
4 appropriate for the restitution order to be issued, because,
5 I mean, we can engage in hypotheticals about what kind of
6 notification obligations Capital One would have had if they
7 had had a responsible disclosure, but really, the gravamen of
8 this offense was the downloading of the data and the fact
9 that it was in someone's possession with unknown use, and
10 eventually, it was decided that it wasn't used, but -- and
11 the anxiety that that caused to millions of people.

12 So I think it's very important for that to be reflected in
13 the restitution order, and engaging in, you know,
14 counterfactuals about what might have happened had
15 Ms. Thompson acted lawfully I don't think is necessarily
16 helpful to, you know, the Court or the analysis.

17 THE COURT: Ms. Meister, could you send to the
18 government and to the Court the Third Circuit case that you
19 mentioned?

20 MS. MEISTER: Yes, Your Honor.

21 THE COURT: I'll take a look at that today.

22 And if you have any response, Ms. Manca, that you want me
23 to look at, just do it in a one-page --

24 MS. MANCA: And my understanding is that Third
25 Circuit case deals with actual versus intended loss under the

1 guidelines and not with restitution at all, but --

2 THE COURT: Right, that's what she's saying, but I
3 just want to look at it. I have been reversed by the Ninth
4 Circuit on that very issue, so... Because, to me, it should
5 be intended loss, but I'm just interested in that. You know,
6 I'm home now. I'm going to go to the office, and I want to
7 look things over one last time and talk to my law clerk, and
8 I will make a decision about this tomorrow, okay? All right.

9 Any other questions? No. All right, good.

10 Mr. Hamoudi, this might be the last hearing on this case,
11 correct?

12 MR. HAMOUDI: Yes, Your Honor.

13 THE COURT: Can't you stay on the case with your new
14 firm, just do it pro bono like Ms. Meister and Mr. Klein?

15 MR. HAMOUDI: I'm coordinating an agreement to stay
16 with Paige.

17 THE COURT: Okay, good.

18 And Mr. Klein and Ms. Meister, you don't have to answer
19 this, but have you looked at how much you would have charged
20 a paying client for your hours on this case?

21 MR. KLEIN: We don't think about that, Your Honor,
22 but it's significant, because we do track pro bono hours at
23 our firm, and it's hundreds and hundreds and hundreds of
24 hours.

25 THE COURT: Yeah, right, and your hourly rate is --

1 MR. KLEIN: And it's been a real pleasure -- it's
2 been a real pleasure representing Paige.

3 THE COURT: Yeah, and I totally get that. I'm not
4 saying you regret it at all. Plus, she got all that great
5 publicity of appearing before Judge Lasnik and -- well, I'll
6 set that one aside.

7 MR. KLEIN: You said some kind things, Your Honor.
8 We appreciate that. Thank you.

9 THE COURT: Oh, well, it was very funny, because my
10 son, who's definitely a Reddit guy, calls me after the
11 sentencing -- doesn't call me, but texts me -- and says,
12 "Man, you're getting beat up on Reddit, Dad," you know, "What
13 were you thinking?" "Thanks, Alex," but --

14 MR. KLEIN: Go on social media, Your Honor.
15 That's --

16 THE COURT: I'm not on social media at all, and I
17 will not be, but it is funny how the world looks from
18 different places, isn't it?

19 MR. KLEIN: Yes.

20 THE COURT: Okay. So thank you, all. I will get
21 this order out on restitution and forfeiture tomorrow.

22 MR. KLEIN: Everyone have nice holidays. Thank you,
23 Your Honor.

24 THE COURT: Thank you. You too. Goodbye.

25 THE DEFENDANT: Thank you, Your Honor.

1 THE COURT: Good-bye, Paige.

2 MS. MANCA: Thank you, Your Honor.

3 (Adjourned.)

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10 C E R T I F I C A T E

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13 I certify that the foregoing is a correct transcript from
14 the record of proceedings in the above-entitled matter.

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18 /s/ Sheri Schelbert

19 SHERI SCHELBERT
20 COURT REPORTER

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